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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/502,260	07/21/2004	John J Strzempko	TRW(FAS)5993-1P	7491
26294	7590	03/09/2006	EXAMINER	
TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P.			SMITH, KIMBERLY S	
1300 EAST NINTH STREET, SUITE 1700			ART UNIT	
CLEVEEVLAND, OH 44114			PAPER NUMBER	

3644

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/502,260

Applicant(s)

STRZEMPKO ET AL.

Examiner

Kimberly S. Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 20-26 is/are rejected.
- 7) ☒ Claim(s) 17-19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7/21/04</u>   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Specification***

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.
2. The disclosure is objected to because of the following informalities: page 1, line 5 insert -  
-now US Patent 6,588,373 B1- - following the parent application information.

Appropriate correction is required.

### ***Double Patenting***

3. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

4. Claims 1-15 and 22, 24-26 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-16 and 18-20, respectively of prior U.S. Patent No. 6,588,373 B1. This is a double patenting rejection. It is noted that in claim 11, the terminology "groove" in the patent has been replaced by "recess" in the current application. However, this term is defining the same structural component and is therefore coextensive in scope. Also claim 22, line 12

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replaces the word “an” for “and” in the current application. This appears to be a typographical error and also does not affect the coextensive nature of the scope of the claims.

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claim 16, 20, 21 and 23 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 6, 1 and 17, respectively of U.S. Patent No. 6,588,373. Although the conflicting claims are not identical, they are not patentably distinct from each other because, as per claim 16 the patented claim is directed to the aligning pin extending upwardly from a cover piece and an aperture located in the closure piece whereas the application claims the aligning pin being located in the closure piece with the aperture located in the cover. This is considered to be a mere rearrangement of parts of an invention which has been held to be obvious to one having only routine skill in the art. With respect to claims 20 and 21, the patented claim 1 does not include the limitation regarding a rim defining the open top of the container, however it is obvious that an open container will have a rim as a rim is defined to be

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an outer edge or border which is required to have an open container. Further, the patented claim does not positively state that the cover is adapted to snap onto the rim of the container.

However, it has been held that the recitation that an element is “adapted to” perform a function is not a positive limitation but only requires the ability to so perform (which is evident in the patent as viewed in Figure 4). With respect to claim 23, the patented claim does not include the limitation that the second mating protrusion extends outwardly beyond the outer periphery of the structure. However, it is considered obvious that a protrusion extending outwardly in a second direction for engaging a second corresponding protrusion would extend beyond the outer periphery of the structure.

#### ***Allowable Subject Matter***

7. Claims 17-19 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to disclose or render obvious the invention as claimed. Stein, US Patent 6,543,387 is considered to be the closest art of record. Stein discloses a container (12), a cover piece (106), a filter unit (34) and a closure piece (72) wherein the cover piece has a passage (28) therein. Stein also discloses a viewing window (128) and protrusions (136) to engage a second container. However, in Stein, the claim limitation regarding the cover piece having a passage through which at least one animal may pass during insertion and extraction is not met. Prior to use, the filter units are placed in the device and the animals are inserted into the container prior to the lid being attached. As such, there would be no motivation to one with skill in the art to

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have a closure piece that would be rotatable relative to the cover piece for inserting and removing the animal.

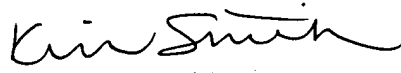
***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schultz (US 6,877,269), Stein (US 6,543,387), Chrisco et al. (US 6,523,499), Hooper, Jr. (US 5,349,924) and Sedlacek (US 4,480,587).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S. Smith whose telephone number is 571-272-6909. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Kimberly S Smith  
Examiner  
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